- 2. Plaintiff is informed and believes and on the basis of that information and belief alleges that OVERNIGHT LOGISTICS, INC., a corporation; FREIGHT ALL KINDS, INC., a corporation; FAK, INC., a corporation; DANIEL MONTALVO VILLA, an individual (dba United DM Express); and DOES ONE through TEN are now and at all times herein material were engaged in business as brokers and/or common carriers for hire in the county of San Bernardino, State of California.
- 3. The true names of defendants sued herein as DOE ONE through DOE TEN, each of whom is or may be responsible for the events and matters herein referred to, and each of whom caused or may have caused or contributed to the damage herein complained of, are unknown to plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will amend its complaint to show the true names of said defendants when the same have been ascertained.
- 4. The claims alleged herein contain a cause of action for non-delivery of cargo and is a claim under the Carmack Amendment, 49 U.S.C. § 14706. Accordingly, this Court has jurisdiction over this claim pursuant to 28 U.S.C. §1331. Venue is proper under 28 U.S.C. §1391(b).
- 5. Plaintiff is informed and believes and on the basis of such information and belief alleges that on or about August 11, 2017, at Fontana, California, defendants OVERNIGHT LOGISTICS, INC., FREIGHT ALL KINDS, INC., FAK, INC., DANIEL MONTALVO VILLA (dba United DM Express), and DOES ONE through TEN, received a cargo of 1,147 tires and wheels belonging to plaintiff's insured, Tireco, Inc. and/or related entities. Under bill of lading no. 51344 and others, said defendants, and each of them, agreed, orally and in writing, and in return for good and valuable consideration, to carry said cargo from Fontana, California, to Westwego, Louisiana, and there deliver said cargo in the same good order, condition, and quantity as when received.

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6. Thereafter, in breach of and in violation of said agreements, said 1 2 defendants did not deliver said cargo in the same good order, condition, and 3 quantity as when received at Fontana, California. To the contrary, said defendants, and each of them, failed to deliver the subject shipment at all, to its 4 intended destination of Westwego, Louisiana, as a result of which the cargo was 5 lost. The value of the undelivered cargo was \$71,942.04. 6 7. 7 Prior to the shipment of the herein described cargo and prior to any loss thereto, plaintiff issued its policy of insurance whereby plaintiff agreed to 8 indemnify the owner of said cargo, and its assigns, against loss of or damage to 9 said cargo while in transit, including mitigation expenses, and plaintiff has 10 therefore become obligated to pay, and has paid, to the person entitled to payment 11 under said policy the sum of \$70,942.04, which is the value of the non-delivered 12 cargo (net of the \$1,000 policy deductible), on account of the herein described 13 loss. 14 8. Plaintiff has therefore been damaged in the sum of \$70,942.04, no 15 part of which has been paid, despite demand therefor. 16 WHEREFORE, plaintiff prays that this Court enter judgment in its favor 17 and against defendants; that this Court decree payment by defendants to plaintiff 18 in the amount of \$70,942.04, together with prejudgment interest thereon and costs 19 of suit herein; and that plaintiff have such other and further relief as in law and 20 justice it may be entitled to receive. 21 22 Respectfully submitted,

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27 28 Attorneys for Plaintiff FILIATED FM INSURANCE COMPANY

/s/ JOSHUA E. KIRSCH

GIBSON ROBB & LINDH LLP

COMPLAINT FOR NON-DELIVERY OF CARGO Case No. 2:18-cv-08359; Our File No. 5724.15

Dated: September 27, 2018